

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1438 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and Sd/-

MR.JUSTICE H.R.SHELAT Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KANUBHAI DAHYABHAI PATEL

Versus

SPECIAL LAND ACQUISITION OFFICER

Appearance:

MR NITIN M AMIN for Petitioner

MR. KAMAL MEHTA, GOVERNMENT PLEADER for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE H.R.SHELAT

Date of decision: 27/11/96

ORAL JUDGEMENT

Against the award made by 2nd Extra Assistant Judge, Nadiad on 22.2.1985 in Compensation Case No. 64/81, the appellant (hereinafter referred to as the original claimant) has preferred this appeal.

2. By notification dated 3.1.1980 under section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act), the lands referred to in the notification were sought to be acquired. After following the procedure laid down under the Act, notification under section 6 of the Act was published on or about 1.1.1983. Special Land Acquisition Office ultimately held that the claimant is entitled to get Rs.3/- per sq. mtr. by way of compensation for land bearing survey No. 1704 situated in the sim of village Mahij, Tal. Mahmedabad, Dist. Kheda, which admeasures 4832 sq. mtrs.

3. Mr. Amin, learned advocate appearing for the original claimant has contended that the Court below has seriously erred in not applying the yield method properly and proper multiplier while awarding the compensation. He further submitted that the Court has seriously erred in not appreciating the evidence of the appellant while fixing the amount of compensation. Mr. Amin submitted that the land situated in the sim of village Mahij and adjoining to the land in question have been acquired by notifications 4 and 6 published on 3.1.1980 and 4.6.1981. He submitted that the Special Land Acquisition Officer, in that case, fixed the market value at Rs.300/- per Are equivalent to Rs.3/- per sq. mtr. and on reference, the Extra Assistant Judge, Nadiad, in Compensation Cases No. 29/83 to 50/83 applied a multiplier of 15 and held that the claimants are entitled to get the compensation Rs.15/- per sq. mtr. apart from interest, solatium etc.

4. Learned advocate Mr. Amin has produced before us a copy of the judgment in Compensation Case No. 46/83 being main case along with Compensation Cases No. 29/83 to 50/83, which is ordered to be taken on record. It is required to be noted that in the present appeal, 2nd Extra Assistant Judge, Nadiad dismissed the Reference by order dated 22.2.1985 and from the judgment, it is very clear that one Mr. D.M. Jhala, learned District Government Pleader appeared for the opponent, i.e. the Special Land Acquisition Officer. Mr. Amin, relied on the judgments in Compensation Case No. 29/83 to 50/83 disposed of by Extra Assistant Judge, Kheda at Nadiad. The appellant before us was also one of the claimant before that Court, in Compensation Case No. 31/83. Thus, he was aware that in Compensation Case No. 64/81, for land situated at village Mahij, for which a notification under section 4 was issued on 3.1.80, the trial Court has thought it fit and proper to award Rs.3/per sq. mtr. by way of compensation. These facts were not placed before the later point in time when the Court decided the Reference cases, though the facts were

mentioned about the amount of rent fixed by the Land Acquisition Officer and later on by the Court, for temporary acquisition. Therefore, it is clear that the claimant was aware about the award, and not only that, but the District Government Pleader was also aware about the award made by the Court because in both the awards, the same District Government Pleader has appeared. It was the duty of the claimant as well as the District Government Pleader to place before the Court instances. The District Government Pleader ought to have realised that earlier, the Court has fixed the amount of compensation of the land situated at village Mahij and at a later point of time, when the case was for land situated at village Mahij and adjoining to the said land, he ought to have placed the facts before the Court and in not doing so, he has failed in discharging his duties. Even the claimant, while claiming the amount of compensation, ought to have placed this material before the Court. The Court may take a different view on the material placed on the record, in accordance with law.

5. We find that in the present case as well as in the case on which Mr. Amin has placed reliance, no documentary evidence whatsoever has been placed to indicate the income. Mr. Amin ultimately submitted that earlier, Re.1/- per sq. mtr. has been determined by the Court for awarding the rent for the land per year, and if that is accepted, then by applying multiplier of 30, the amount should have been awarded by the Court. In the award on which reliance is placed by Mr. Amin, the basis on which the income is worked out is the basis adopted by the Court earlier, at the time of fixing the compensation for temporary acquisition, i.e. rent. However, in the later case on which Mr. Amin has placed reliance, the learned Judge has thought it fit to consider a hike in the price every year at 20% and considering this hike in price, has thought it fit to deduct 1/3rd amount by way of expenses and has worked out ultimately at Re.1/- per sq. mtr. The Court has observed as under :-

"The claimants have claimed the compensation on the basis of 30 years' capitalisation multiplier method but since the lands are agricultural lands and the claimants had realised two crops in a year and when exact datas of the net profit is lacking in all the references, it would be in the fitness of things to hold and consider the proper multiplier at 15 years' purchase and not 20 years' purchase as observed by the Supreme Court in the authority reported in A.I.R. 1983 Supreme Court p. 1190"

The trial Court has further observed that:

"It is true that the value of the lands is high but at the same time in the village Mahij itself, there are also no factories and Mills but they are situated in the vicinity of four to five kms. Under such circumstances, 15 years purchase would be proper for determining the compensation and not 30 years purchase as claimed by the claimants."

Thus, it is very clear that even in the case on which reliance is placed by Mr. Amin, there is no exact data and the Court has awarded multiplier of 15 without any satisfactory evidence.

6. In our opinion, in the instance case, there is no satisfactory evidence for coming to conclusion that the claimants sold wheat at Rs.30 to Rs.40 per 20 kgs or Paddy at Rs.38 to Rs.40 per 20 kgs. Learned Judge, after appreciating evidence, in clear terms, has observed that :-

"So, I find that from the agricultural income the claimant is not able to establish that he is entitled to enhanced rate of compensation. So the factum of annual income is not established. The factum of another sale instance of nearby land in the same vicinity is also not established."

Learned Judge has also relied on the judgment delivered in Reference Case No. 1 of 1981 and 16 of 81 wherein the lands at village Mahij were acquired by Special Land Acquisition Officer in which compensation was awarded at Re.1/- and considering that aspect, the learned Judge has observed that the Special Land Acquisition Officer has rightly awarded compensation at Rs.3/- per sq. mtr. It appears that in the absence of satisfactory evidence that Re.1/- was considered as amount of compensation in other cases at the time of fixing the yearly rent, and the same should have been taken into consideration while applying the multiplier. It is clear from the evidence that it is not a developed area. The lands are agricultural lands. As observed by the Apex Court in the case of Vithalbhai Bakorbhai (deceased) through heirs and legal representatives vs. Executive Engineer, Capital Project and another reported in 1996 (2) GLR 88, the multiplier of 10 is appropriate multiplier. Considering this judgment, Mr. Amin fairly stated that a multiplier of 10 should be applied in the

instant case and in his submission, the award may be modified.

8. No doubt, the rent was fixed little earlier, but in the absence of any evidence, oral or documentary, indicating the income at the time of notification, we have no alternative but to accept the amount of Re.1/per sq. mtr. as accepted by the trial Court, for rent to be paid yearly. That would be the basis for considering the amount of compensation. We have accepted the same, and, applying a multiplier of 10, the claimant is entitled to the compensation at Rs.10/- instead of Rs.3/- per sq. mtr. The award stands modified accordingly. It goes without saying that on the additional amount of compensation, which is Rs.7/- per sq. mtr., the claimant will be entitled to solatium and interest as per law.

The appeal stands partly allowed accordingly, with no order as to costs.

csm./